

CSD 1001A [11/15/04]

Name, Address, Telephone No. &amp; I.D. No.

CURRY ADVISORS, A Professional Law Corporation

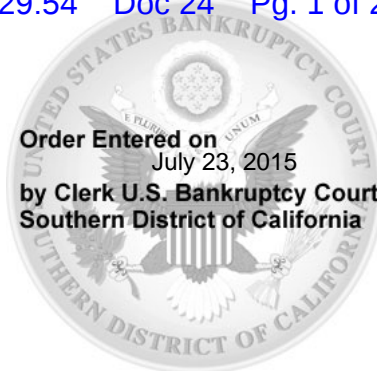
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Proposed counsel for Debtor / Debtor In Possession

**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

TIERRA DEL REY, LLC

Debtor.

BANKRUPTCY NO. 15-04253-LT11

Date of Hearing: July 21, 2015

Time of Hearing: 2:30 p.m.

Name of Judge: Hon. Laura S. Taylor

**COURT MODIFIED  
ORDER ON****DEBTOR'S EMERGENCY MOTION RE USE OF CASH COLLATERAL AND OTHER RELIEF**

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through 4 with exhibits, if any, for a total of 22 pages, is granted. Motion/Application Docket Entry No. 15

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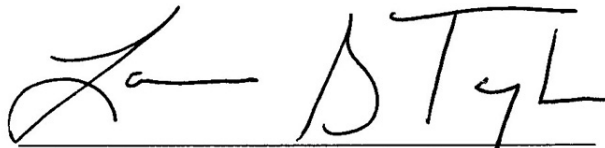
DATED: July 23, 2015

Signature by the attorney constitutes a certification under Fed. R. of Bankr. P. 9011 that the relief in the order is the relief granted by the court.

Submitted by:

Curry Advisors, A Professional Law Corp.  
(Firm name)

By: /s/ K. Todd CurryAttorney for ☒ Movant ☐ Respondent

  
Judge, United States Bankruptcy Court

CSD 1001A [11/15/04] (Page 2)

**ORDER ON DEBTOR'S EMERGENCY MOTION RE USE  
OF CASH COLLATERAL AND OTHER RELIEF**

DEBTOR: TIERRA DEL REY, LLC

CASE NO.: 15-04253-LT11

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The Debtor's Emergency Motion for Order (1) Approving Cash Collateral Stipulation, (2) Authorizing Debtor's Temporary Use of Post-Petition Bank Account, and (3) Authorizing Pre-Petition Receiver to Retain Existing Cash Balances Temporarily (the "Emergency Motion") came on for hearing on July 21, 2015, at 2:30 p.m., in Department Three of the above-entitled Court, the Honorable Laura S. Taylor, Chief United States Bankruptcy Judge, presiding. Appearances were noted on the record at the hearing.

The Court having considered the Emergency Motion and the representations of counsel who appeared at the hearing, notice appearing proper under the circumstances, and good cause appearing therefor,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The cash collateral stipulation ("Stipulation"), which was attached to the Emergency Motion as Exhibit "A" and which is attached to this Order as Exhibit "A," is approved and is made an order of this Court, subject to the modifications set forth in this Order.
2. The budget attached as Exhibit 1 to the Stipulation shall be deemed modified to include quarterly fees payable to the United States Trustee.
3. Consistent with Guideline No. 2 contained in Appendix D2 of the Local Bankruptcy Rules, notwithstanding any other provision of the Stipulation, the estate and parties in interest shall not be bound by (i) provisions or findings of fact (if any) contained in the Stipulation with respect to the validity, perfection, or amount of any secured creditor's pre-petition lien or debt, or (ii) any waiver of claims against any secured creditor.
4. In the Stipulation, at page 9, paragraph 4.10, line 1, the words "its property" shall be deemed changed to "the Collateral" (which has the meaning defined in the Stipulation at page 2,

CSD 1001A [11/15/04] (Page 3)

**ORDER ON DEBTOR'S EMERGENCY MOTION RE USE  
OF CASH COLLATERAL AND OTHER RELIEF**

DEBTOR: TIERRA DEL REY, LLC

CASE NO.: 15-04253-LT11

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paragraph D, lines 23-24).

5. In the Stipulation, at page 9, paragraph 4.10, line 2, the word "and" shall be deemed changed to "or."

6. Counsel for AP Mortgage Company, Inc. ("AP") shall be provided with the same reports, documents, and inspection rights to which Fannie Mae is entitled pursuant to the Stipulation. Any such reports and documents shall be provided as follows: Michael Wright, 5190 Governor Drive, #207, San Diego, CA 92122, mwright@mikewrightlaw.com.

7. Notwithstanding the U.S. Trustee's Guidelines and the provisions of the Stipulation, the Debtor shall be and hereby is authorized to use its post-petition account at Point Loma Credit Union ("PLCU") pending clearing of the Franchise Tax Board suspension and opening of official debtor in possession accounts. Provided, however, that the total on deposit in the PLCU account shall not exceed \$250,000. Further provided, however, that in the event the Debtor will have in its possession more than \$250,000, then, upon either further Order of the Court or the written consent of counsel for Fannie Mae, AP, and the U.S. Trustee, the Debtor shall open such additional non-debtor-in-possession accounts as needed to ensure that all funds on deposit have appropriate insurance against loss. **Debtor shall provide to U.S. Trustee, Fannie Mae, and AP Mortgage, through email, copies of all PLCU bank statements upon receipt by Debtor, copies of all check images, to extent readily available, and notification and copies of any wire transfers in the amount of \$100,000.00 or over.** The Debtor shall open and commence using official debtor in possession accounts at the earliest possible time, whereupon the foregoing restrictions shall not apply.

8. Provided that his receiver's bond remains in place and has not been exonerated, the pre-petition receiver, William Hoffman, shall be and hereby is authorized to retain possession of cash collateral that presently is in his possession until the Debtor is able to open official debtor in

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CSD 1001A [11/15/04] (Page 4)

*ORDER ON DEBTOR'S EMERGENCY MOTION RE USE  
OF CASH COLLATERAL AND OTHER RELIEF*

DEBTOR: TIERRA DEL REY, LLC

CASE NO.: 15-04253-LT11

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possession accounts, whereupon such cash collateral shall be deposited into an official debtor in possession cash collateral account.

9. Parties in interest retain their rights concerning the Debtor's suspended status with the Franchise Tax Board.

Approved as to form:

HERSHORIN & HENRY, LLP

By: \_\_\_\_\_

David M. Hershoin  
Thomas Van  
Counsel for Fannie Mae

By: \_\_\_\_\_

Michael Wright  
Counsel for AP Mortgage Company, Inc.

TIFFANY L. CARROLL  
ACTING UNITED STATES TRUSTEE

By: \_\_\_\_\_

Kristin T. Mihelic  
Trial Attorney for the Acting United States Trustee

# **EXHIBIT “A”**

1 DAVID M. HERSHORIN, ESQ. (SBN 150618)

2 Email: [davidh@hhlawgroup.com](mailto:davidh@hhlawgroup.com)

3 **HERSHORIN & HENRY, LLP**

4 27422 Portola Parkway, Suite 360

5 Foothill Ranch, California 92610

6 Telephone: (949) 859-5600

7 Facsimile: (949) 859-5680

8 Attorneys for Secured Creditor FANNIE MAE

9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 In re:

12 Tierra del Rey, LLC

13 Debtor.

CASE NO.: 15-04253-LT11

Chapter 11

14 **STIPULATION BETWEEN**  
15 **DEBTOR IN POSSESSION AND**  
16 **SECURED CREDITOR FANNIE**  
17 **MAE FOR USE OF CASH**  
18 **COLLATERAL**

19 This Stipulation for Use of Cash Collateral (“**Stipulation**”), is entered into by  
20 and between Secured Creditor FANNIE MAE (“**Fannie Mae**”), on the one hand, and  
21 debtor Tierra del Rey, LLC (“**Debtor**”)<sup>1</sup>, on the other hand. This Stipulation is made  
22 with reference to the following facts:  
23  
24  
25

26 <sup>1</sup> As of the filing date and the date of this Stipulation, Debtor was and remains suspended by the  
27 **California Franchise Tax Board** (“FTB”), and as such, under California Law, the Debtor is  
28 incapable of transacting business. The effect on the Debtor In Possession under federal law may be  
less clear. By entering into this Stipulation with the Debtor, Fannie Mae does not waive, and  
hereby reserves, any and all rights regarding the Debtor’s suspended status.

## I.

RECITALS

A. On or about June 29, 2015 (the "**Petition Date**"), Debtor commenced this case by filing a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**").

B. On or about September 10, 2010, Centerline Mortgage Capital, Inc. ("**Original Lender**"), made a loan to Debtor, in the amount of \$4,540,000.00 (the "**Loan**"), secured by, among other things, an 80 unit multi-family property, and the rents, issues and profits therefrom, located at and commonly known as 3675 King Street, La Mesa, California 91941 (the "**Property**"). The Loan is evidenced by that certain Multifamily Note, dated as of September 10, 2010 (the "**Note**"), from Debtor in favor of the Original Lender.

C. The Loan is secured by that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (California) dated as of September 10, 2010 ("**Deed of Trust**"), from the Debtor in favor of the Original Lender, recorded on September 15, 2010 as Instrument Number 2010-0487955, in the County Recorder of San Diego County (the "**County Recording Office**").

D. The Note, Deed of Trust, any modifications, amendments and restatements thereof, and any and all other documents evidencing, securing or in any matter relating to the Loan are hereinafter referred to collectively as the "**Loan Documents**." Pursuant to the Loan Documents, the funds advanced under the Loan were secured by substantially all of the assets of the Debtor, including without limitation the Property, as more specifically described in the Loan Documents (the "**Collateral**").

E. On or about September 15, 2010, Original Lender executed an "Assignment of Deed of Trust" ("**Assignment**"), assigning the Deed of Trust to

1 Fannie Mae. The Assignment was recorded on September 15, 2010, as Instrument  
2 Number 2010-0487956, in the County Recording Office.

3 F. Thereafter, Fannie Mae appointed Hunt Mortgage Group (formerly  
4 known as Centerline Capital Group), as Servicer (“**Servicer**”) for Fannie Mae regarding  
5 the Loan, Loan Documents, Property, and Collateral.

6 G. Fannie Mae contends that on or about March 27, 2015, Fannie Mae’s  
7 Servicer received a copy of another deed of trust recorded against the Property  
8 provided by another lender (“**Jr. Lienholder**”), and recorded in a junior position  
9 (herein, the “**Jr. Lienholder’s Deed of Trust**”), against the Property. The Jr.  
10 Lienholder’s Deed of Trust revealed that the Debtor had, on or about July 20, 2012,  
11 pledged the Property as collateral to another lender. Fannie Mae contends that such  
12 pledge occurred without notice to or consent from Fannie Mae and that the same  
13 violated the terms of the Deed of Trust in favor of Fannie Mae. Fannie Mae further  
14 contends that its Deed of Trust, at paragraphs 16 and 21, expressly prohibits the  
15 Debtor from making any such pledge or Transfer (as that term is defined in the Deed  
16 of Trust), and that such pledge or Transfer constitutes an Event of Default under the  
17 Deed of Trust.

18 H. Fannie Mae contends that on or about April 20, 2015, Fannie Mae  
19 notified the Debtor, in writing, of the Event of Default under the Deed of Trust,  
20 accelerated the full amount of the outstanding balance of the Loan, and commenced  
21 enforcement of the breach of the Loan Documents by, among other things, preparing  
22 a complaint to enforce the terms of the Deed of Trust and appoint a receiver.

23 I. Unbeknownst to Fannie Mae, Jr. Lienholder commenced on or about  
24 April 10, 2015, an action against the Debtor, and its principals, for among others  
25 things, foreclosure of the Jr. Lienholder Deed of Trust, in the San Diego County  
26 Superior Court, entitled *AP Mortgage Company, Inc. v. Bay Vista Methodist Heights*,  
27  
28



1 case number 37-2015-000-12044-CU-OR-CTL (the “**Action**”). In the Action, the  
2 Court appointed Bill Hoffman, as Receiver, pursuant to the Jr. Lienholder’s request.

3 J. On or about April 28, 2015, Fannie Mae moved, via an ex parte  
4 application, to intervene into the Action to enforce the terms of the Deed of Trust.  
5 The Court granted Fannie Mae’s intervention based on its status as the senior secured  
6 creditor, allowed Fannie Mae to file its complaint in intervention, and amended the  
7 order appointing the receiver to confirm that the receiver will not be terminated  
8 unless and until Fannie Mae was paid in full all amounts owed under the Loan  
9 Documents.

10 K. Fannie Mae contends that as of June 1, 2015, the total amount owed to  
11 Fannie Mae equaled \$4,918,428.24, plus accrued interest, attorneys’ fees,  
12 enforcement costs, default interest, and other amounts due under the Loan  
13 Documents.

14 L. The Action is presently stayed as to the Debtor.

15 M. The Debtor claims that it requires the use of the cash collateral in order  
16 to continue to operate the Property, pay vendors (other than the Debtor), and  
17 necessary costs of the Property’s maintenance.

18 N. The parties hereby enter into this Stipulation to enable the Debtor’s use  
19 of cash collateral (as defined in section 3 below), and to enable the operation of the  
20 Debtor's Property to continue, under the terms, provisions, and conditions of this  
21 Stipulation.

22 **II.**

23 **STIPULATION**

24 **NOW, THEREFORE**, the following is hereby stipulated and agreed to by and  
25 among the parties:

26 1. **Incorporation of Recitals and Existing Agreements.** The recitals are  
27 incorporated herein by this reference. Except as modified by this Stipulation, all  
28

1 terms, conditions and provisions of the Note and Deed of Trust shall remain in full  
2 force and effect. Unless otherwise expressly agreed in writing, this Stipulation or any  
3 other document executed by Debtor in favor of Fannie Mae shall be considered to  
4 supplement and not replace any agreement previously entered into between the  
5 Debtor and Fannie Mae.

6       2.     **No Senior Liens or Encumbrances.** The Debtor represents that it is  
7 not aware of any liens or encumbrances senior to Fannie Mae's lien against the  
8 Property (except for the general lien to secure real property taxes) and acknowledges  
9 that Fannie Mae has specifically relied on this representation in its consent to this  
10 Stipulation. Invalidity of this representation is a specific event of default under this  
11 Stipulation giving rise to Fannie Mae's remedies set forth below.

12       3.     **Definition of Cash Collateral.** The rents, royalties, issues, profits,  
13 security deposits, insurance proceeds, and income of the Property constitute "**Cash**  
14 **Collateral**," as that term is used in this Stipulation, is defined as in sections 363(a)  
15 and 552(b) of the Bankruptcy Code.

16       4.     **Debtor's Use of Fannie Mae's Cash Collateral.** Debtor's use of Fannie  
17 Mae's Cash Collateral is subject to each of the following terms and conditions as set  
18 forth herein below:

19           4.1       Commencing from June 29, 2015 through and including  
20 September 29, 2015 (the "**Termination Date**"), Debtor shall be authorized to use  
21 Fannie Mae's Cash Collateral in accordance with the terms of this Stipulation.  
22 Debtor's authorization to use Fannie Mae's Cash Collateral shall automatically expire  
23 at 5:00 p.m., California time on the Termination Date, unless Fannie Mae and Debtor  
24 extend the expiration date by written agreement for up to 60 days; Fannie Mae's  
25 consent to any extension may be withheld in its sole discretion. Approval of this  
26 Stipulation by the Court shall constitute authority by the Court that the parties may  
27  
28

1 extend the Stipulation for up to 60 days on similar terms without the necessity or  
2 requirement of further Court approval.

3           4.2       Debtor shall collect and promptly deposit all Cash Collateral in its  
4 Possession on the Petition Date or that comes into its possession thereafter in a  
5 segregated account entitled “Chapter 11 Debtor-in-Possession,” in accordance with  
6 the U.S. Trustee’s office (“**Cash Collateral Account**”) to be maintained at an  
7 approved depository. No disbursements shall be made from the Cash Collateral  
8 Account, except in accordance with the provisions of this Stipulation, or pursuant to  
9 an order of the Bankruptcy Court after notice and a hearing.

10           4.3       From the Cash Collateral Account, the Debtor may use Cash  
11 Collateral to pay actual, necessary, and reasonable expenses of ordinary maintenance  
12 and operation of the Property which are incurred in the ordinary course of business as  
13 set forth in the budget attached as **Exhibit “1”** hereto (“**Budget**”) and incorporated  
14 herein by this reference, or any later budget presented to and agreed to, in writing, by  
15 Fannie Mae; provided, however, that under no circumstances shall Debtor pay,  
16 directly or indirectly, any sums to members, managers, or partners, insiders,  
17 principals, affiliates of Debtor, any entity or person holding a lien recorded against  
18 the Property junior or subordinate to Fannie Mae’s Loan, or any pre-petition  
19 obligations (priority or otherwise), including without limitation the FTB.

20           4.4       Without the written consent of Fannie Mae the total payments for  
21 monthly expenses shall not exceed by more than five (5) percent of the total set forth  
22 in the Budget for each category of expense or by more than five (5) percent of all  
23 payments for all categories of expenses. No other payments or expenditures shall be  
24 made except as Fannie Mae may specifically authorize in writing. Any unused sum  
25 remaining in any one category of expense may not be rolled over to a subsequent  
26 month, unless such rollover is because payment of an expense category was not yet  
27 due or made in such prior month.

1           4.5           Debtor may not use any Cash Collateral for any purpose or  
2 expense not set forth in the Budget without the prior written consent of Fannie Mae  
3 or an order of the Bankruptcy Court.

4           4.6           The Debtor shall continue to timely pay on a current basis  
5 monthly debt service payments (commencing with the payment due on or about July  
6 1, 2015) in the same amount as when the Loan was in effect in the monthly amount  
7 of \$28,365.63, exclusive of late fees or default interest which Fannie Mae contends is  
8 also due (this paragraph does not, in any way, reinstate what Fannie Mae contends is  
9 the fully accelerated and matured Loan, nor does it waive the Debtor's alleged right  
10 to seek to cure any defaults and to reinstate the Loan) to Fannie Mae set forth in  
11 Exhibit 1, and for any such payments, the Debtor agrees that turnover of such Cash  
12 Collateral pursuant to this Stipulation is voluntarily made. The Debtor agrees that  
13 any turnover to Fannie Mae of any Cash Collateral and any application of the same  
14 by Fannie Mae to the Loan indebtedness shall not be deemed, in any manner, to  
15 constitute a setoff or other "action" as that term is used or defined in section 726 of  
16 the California Code of Civil Procedure, constitute a violation of the "one action rule"  
17 or be considered an effort by Fannie Mae to collect a deficiency judgment.

18           4.7           **Notice of Emergency Expenditures.** In the event that an  
19 emergency develops requiring an immediate capital expenditure or an expenditure  
20 exceeding the Budget amount stated in subparagraph 4.3 above, Debtor shall give  
21 written notice by letter, facsimile or email transmission to Fannie Mae as follows:

22 David Hershorin  
23 **Hershorin & Henry, LLP**  
24 27422 Portola Parkway, Suite 360  
25 Foothill Ranch, CA 92610  
26 Telephone: (949) 859-5600  
27 Facsimile: (949) 859-5680  
28 Email: [davidh@hhlawgroup.com](mailto:davidh@hhlawgroup.com)  
**Counsel for Fannie Mae**

1 The notice shall contain a detailed description of such an emergency expense. If no  
2 response to the notice is received by counsel for Debtor within 48 hours after written  
3 notice is received by Fannie Mae's counsel (plus an additional 24 hours if the notice  
4 is given between 4 p.m. on a Friday and 7 a.m. on a Monday), the request shall be  
5 deemed approved. If the request is denied, Debtor may seek authority from the Court  
6 to make such expenditure from the Cash Collateral Account, on an expedited basis.  
7 If the Debtor represents to the Court that seeking Fannie Mae's advance approval of  
8 an emergency expense in accordance with the foregoing procedure before seeking  
9 Court authorization would lead to significant damage to the Property, the Debtor may  
10 seek Court authorization without first seeking Fannie Mae's approval pursuant to the  
11 foregoing procedure. If an emergency requires an immediate expenditure of cash  
12 collateral in excess of the Budget amount stated in subparagraph 4.3 above to avoid  
13 significant damage to the Property after written notice to Fannie Mae (as set forth in  
14 paragraph 17 below) but before either Fannie Mae's approval or the Court's  
15 authorization can be obtained, the Debtor may make the expenditure but shall seek  
16 Fannie Mae's approval and (absent Fannie Mae's approval) the Court's authorization  
17 as soon as practicable.

18           4.8       Except as provided in the Budget, Debtor shall not make any  
19 payments of any kind whatsoever from the Cash Collateral Account to any person or  
20 entity holding a lien on the Collateral junior to the interest of Fannie Mae, or to  
21 members, managers, or partners, insiders, principals, or affiliates of Debtor without  
22 the prior written consent of Fannie Mae, an order of the Bankruptcy Court, or  
23 approval of an Insider Compensation Application.

24           4.9       Debtor shall provide to Fannie Mae copies of all filings heretofore  
25 or hereafter filed by Debtor with the Bankruptcy Court, and/or with the Office of the  
26 United States Trustee, within three (3) business days of such filing, if counsel to  
27 Fannie Mae does not otherwise receive them through the CM/ECF system.  
28

1           4.10       Debtor shall not sell or dispose of any of its property outside of  
2 the ordinary course of business without the advance consent of Fannie Mae and an  
3 entered order from the Bankruptcy Court.

4           4.11       The automatic stay presently in effect in this case pursuant to  
5 section 362 of the Bankruptcy Code is hereby modified by the terms and conditions  
6 hereof, to effectuate the terms hereof and permit the adequate protection provisions in  
7 favor of Fannie Mae and the extent necessary to enable Fannie Mae to record the  
8 order as entered by the Bankruptcy Court approving this Stipulation, as Fannie Mae  
9 deems appropriate.

10          4.12       The Debtor shall prepare and maintain and upon reasonable notice  
11 provide to Fannie Mae for examination the following records:

12               A.     All records required to be kept or maintained by the Debtor,  
13 including those required by the Bankruptcy Code, the Federal Rules of Bankruptcy  
14 Procedure, the rules of this Court and the United States Trustee.

15               B.     All records required to be kept or maintained by the terms and  
16 conditions of this Stipulation, and any other agreement executed by the Debtor in  
17 favor of Fannie Mae.

18               C.     In addition, the Debtor shall provide to Fannie Mae the following  
19 reports in a timely manner.

20                   1.     On or before execution of this Stipulation, the Debtor shall  
21 provide Fannie Mae with copies of all documents filed by the Debtor with the Office  
22 of the U.S. Trustee, and thereafter concurrently with such filing, provide Fannie Mae  
23 with copies of all documents filed by the Debtor with the Office of the U.S. Trustee.

24                   2.     On or before the last business day of each month during the  
25 term of this Stipulation, beginning with the first such report due by the Debtor, the  
26 Debtor shall provide Fannie Mae with copies of the monthly operating reports.



1                   3.     The Debtor shall also provide Fannie Mae in a timely and  
2 prompt fashion all reports or other information required by the Note, the Deed of  
3 Trust, and any other agreement executed by the Debtor in favor of Fannie Mae or any  
4 other agreement which may in the future be executed by the Debtor in favor of  
5 Fannie Mae.

6                   D.     Inspection Rights. Fannie Mae is authorized, in its discretion, to  
7 reasonably audit the Debtor's books and records, and to inspect and/or appraise the  
8 Property. Fannie Mae or its designated representative or agent shall be entitled on  
9 reasonable notice to inspect the books and records of the Debtor at any time during  
10 normal business hours. Fannie Mae shall be entitled to have its appraiser visit the  
11 Property upon reasonable notice to inspect and appraise the Property.

12                  E.     In addition to the foregoing inspection rights, Fannie Mae shall  
13 have and be entitled to all inspections or other information required by the Note, the  
14 Deed of Trust, and any other agreements executed by the Debtor in favor of Fannie  
15 Mae or any other agreement which may in the future be executed by the Debtor in  
16 favor of Fannie Mae.

17                  F.     Insurance. The Debtor shall maintain insurance at all times for  
18 the Property and shall provide evidence of the same to Fannie Mae.

19                  4.13     **Default.** If Debtor fails to fully and timely perform any  
20 provision, term or condition of this Stipulation, Debtor shall be in default under this  
21 Stipulation. In the event of a default, Fannie Mae shall give written notice to Debtor  
22 of the default, the actions required to cure such default, and its withdrawal of consent  
23 to the use of its Cash Collateral. Unless cured, Debtor's right to use Cash Collateral  
24 shall immediately cease on the later of ten (10) days from the mailing of such written  
25 notice thereof and Debtor shall immediately sequester and account for all Cash  
26 Collateral produced by and/or derived from the Property and/or Replacement Liens.  
27 Notice of any default shall be provided to Debtor under this paragraph to Debtor's  
28

counsel by fax, regular mail, overnight delivery or hand delivery at the following address:

K. Todd Curry  
Curry Advisors, a Professional Law Corporation  
525 B Street, Ste. 1500  
San Diego, CA 92101  
Phone: 619.238.0004  
Fax: 619.238.0006  
Email: tcurry@currylegal.com

4.14 **Additional Events of Default.** Additionally, the occurrence of any of the following shall also be an event of default hereunder:

(a) Entry of an order converting the Debtor's Chapter 11 case to Chapter 7 of the Bankruptcy Code, which order is not stayed within fourteen (14) days of the entry thereof;

(b) Entry of an order dismissing the Chapter 11 case, which order is not stayed within fourteen (14) days of the entry thereof;

(c) Entry of an order by the Bankruptcy Court appointing a Chapter 11 trustee or examiner in the Debtor's bankruptcy case, which order is not stayed within fourteen (14) days of the entry thereof;

(d) Entry of an order granting Fannie Mae relief from the automatic stay;

(e) The filing of any motion by the Debtor to obtain senior or *pari passu* DIP financing without the consent of Fannie Mae;

(f) Failure of the Debtor to comply with any material terms, conditions, or covenants contained in this Order; and

(g) The reversal, vacatur, stay, amendment, supplementation or other modification of the order approving this Stipulation (without Fannie Mae's consent) in a manner which shall, materially and adversely affect the rights of Fannie Mae hereunder, or shall materially and adversely affect the priority of any or all of Fannie Mae's Collateral or security interests or adequate protection.



1           **5. Replacement Liens.** In addition to the rights granted to Fannie Mae  
2 under the Loan Documents and section 552(b), for any Cash Collateral used by  
3 Debtor, Fannie Mae shall be granted replacement liens ("**Replacement Liens**") on  
4 and security interests in all of Debtor's post-petition Collateral, to the same extent,  
5 validity and priority as Fannie Mae's pre-petition liens. In the event of default by  
6 Debtor, and relief from the automatic stay, Fannie Mae may, subject to the rights of  
7 senior creditors in the Collateral, foreclose such replacement liens under the pre-  
8 petition Loan Documents. The replacement liens granted herein shall not create any  
9 lien upon any claims for relief that Debtor might have under 11 U.S.C. §§ 506(c),  
10 544, 545, 547, 548, and 549. The replacement liens and security interests granted  
11 herein are valid, enforceable, and fully perfected, and no filing or recordation or any  
12 other act in accordance with any applicable local, state, or federal law is necessary to  
13 create or perfect such lien and security interest. Debtor shall execute and deliver to  
14 Fannie Mae such documents as Fannie Mae may reasonably request to evidence the  
15 replacement liens granted herein. To the extent that Fannie Mae's lien on all post-  
16 petition Cash Collateral is insufficient to compensate Fannie Mae for the pre-petition  
17 cash collateral, Fannie Mae shall also be allowed an administrative priority claim in  
18 accordance with the provisions of 11 U.S.C. §§ 507(b) for any deficiency.

19           **6. Stipulation Binding.** The terms and conditions of this Stipulation shall  
20 be binding on the parties hereto and their assigns immediately upon the final approval  
21 hereof by the Bankruptcy Court. All provisions of this Agreement are binding upon  
22 this estate, all of Debtor's successors, any successor estate, all creditors, and any and  
23 all other actual or potential successors in interest to Debtor, including without  
24 limitation, any trustee appointed in this Chapter 11 case, any trustee in a Chapter 7  
25 case if the case is converted, any committees formed in either this Chapter 11 case or  
26 following any conversion of this case, and/or any successor estates which are, or  
27 which may hereafter be, appointed, created, or approved.

1           7.     **No Impact on Right to Seek Other or Different Relief.** Nothing  
2 contained in this Stipulation and the order thereon shall be deemed or be construed to  
3 waive, reduce, or otherwise diminish the rights of Fannie Mae to seek additional or  
4 different adequate protection of its interests under the Loan Documents, to seek relief  
5 from the automatic stay, or to take any other action in this bankruptcy case, including  
6 but not limited to, seeking relief from the automatic stay. Furthermore, nothing  
7 contained in this Stipulation shall be deemed or be construed to be an admission that  
8 Fannie Mae is adequately protected.

9           8.     **Conditions Precedent.** It shall be a condition precedent to the  
10 effectiveness of this Agreement that each and all of the following occur:

11               8.1       All parties for whom a signature space is provided below shall  
12 execute and deliver to Fannie Mae this Agreement, and each other document required  
13 to be executed and delivered hereunder; and

14               8.2       The United States Bankruptcy Court shall enter an order  
15 approving the terms and effectiveness of this Agreement.

16           9.     **Neutral Construction of the Stipulation.** This Stipulation is a product  
17 of negotiation among the parties hereto and represents the jointly conceived,  
18 bargained-for, and agreed-upon language mutually determined by the parties to  
19 express their intentions in entering into this Stipulation. Any ambiguity or uncertainty  
20 in this Stipulation shall be deemed to be caused by or attributable to the parties hereto  
21 collectively. In any action to enforce or interpret this Stipulation, the Stipulation shall  
22 be construed in a neutral manner, and no term or provision of this Stipulation, or the  
23 Stipulation as a whole, shall be construed more or less favorably to any one party to  
24 this Stipulation.

25           10.    **Representations and Warranties.** The parties hereto further represent  
26 and warrant to each other as follows:  
27  
28

1           10.1       Each party hereto has received independent legal advice from  
2 attorneys of that party's choice with respect to the advisability of entering into this  
3 Stipulation, and prior to the execution of this Stipulation, that party's attorney  
4 reviewed this Stipulation and discussed the agreement with the party, and the party  
5 has made all desired changes.

6           10.2       Except as expressly stated in this Stipulation, no party hereto has  
7 made any statement or representation to any other party hereto regarding the facts  
8 relied upon by said party in entering into this Stipulation, and each party hereto  
9 specifically does not rely upon any statement, representation, or promise of any other  
10 party hereto in executing this Stipulation, except as expressly stated in this  
11 Stipulation.

12           11.       **Headings.** The headings set forth herein are inserted for convenience of  
13 the parties only, and shall not be used to interpret or construe or in any way affect the  
14 meaning of the terms and provisions of this Stipulation.

15           12.       **Integration.** Except as expressly provided in this Stipulation, this  
16 Stipulation is the final written expression and complete and exclusive statement of all  
17 the agreements, conditions, promises and covenants among the parties with respect to  
18 the subject matter hereof and supersedes all prior or contemporaneous agreements,  
19 negotiations, representations, understandings and discussions among the parties  
20 and/or their respective counsel with respect to the subject matter conveyed hereby.  
21 Any amendment or modification of this Stipulation, in order to be legally binding,  
22 must be in writing specifically referring to the Stipulation and signed by duly  
23 authorized representatives of all parties hereto.

24           13.       **Counterpart Signatures.** This Stipulation may be signed in  
25 counterparts and signatures may be exchanged electrically or by facsimile.

26           14.       **Bankruptcy Court Order.** This Stipulation shall be submitted forthwith  
27 to the Bankruptcy Court for approval and, in that regard, Debtor and/or Fannie Mae  
28

1 may give such notice and opportunity to be heard as is required under Bankruptcy  
2 Rule 4001, Local Bankruptcy Rule 4001-1 or other applicable law.

3       **15. Reservation of Rights.** Except as provided in this Agreement, Fannie  
4 Mae specifically reserves all of its rights, interests and remedies at law and in equity,  
5 or otherwise, with respect to, in connection with or relating to the Loan Documents,  
6 this Agreement and any other agreements, instruments, facts or matters relating to  
7 any of the foregoing. This reservation of rights is not intended and shall not be  
8 construed as exclusive.

9       **16. No Violation of Local Rules.** The parties represent that to the best of  
10 their knowledge, this Stipulation contains no provision that violates the guidelines set  
11 forth in Appendix D2 or Appendix D3 of the Local Bankruptcy Rules.

12       **17. Notices.** Any notice required to be given hereunder shall be given as  
13 follows:

14  
15 *If to Fannie Mae:*

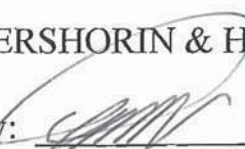
16               David Hershorin  
17               **Hershorin & Henry, LLP**  
18               27422 Portola Parkway, Suite 360  
19               Foothill Ranch, CA 92610  
20               Telephone: (949) 859-5600  
21               Facsimile: (949) 859-5680  
22               Email: [davidh@hhlawgroup.com](mailto:davidh@hhlawgroup.com)

23  
24 *If to Debtor:*

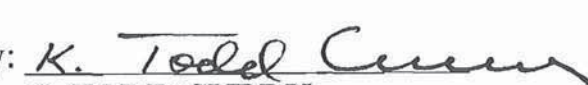
25               K. Todd Curry  
26               Curry Advisors, a Professional Law Corporation  
27               525 B Street, Ste. 1500  
28               San Diego, CA 92101  
                  Telephone: 619.238.0004  
                  Facsimile: 619.238.0006  
                  Email: [tcurry@currylegal.com](mailto:tcurry@currylegal.com)

1 NOW THEREFORE, the parties, by and through their counsel, stipulate to the  
2 foregoing use of Cash Collateral from the Petition Date through September 29, 2015.

3  
4 HERSHORIN & HENRY LLP

5 By:   
6 DAVID M. HERSHORIN  
7 Attorneys for Fannie Mae

8 CURRY ADVISORS, A PROFESSIONAL LAW CORPORATION

9  
10 By:   
11 K. TODD CURRY  
12 Attorneys for Debtor TIERRA DEL REY, LLC  
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## EXHIBIT 1—BUDGET

**RECURRING MONTHLY COSTS**

FNMA Mtg. Note \$28,326.51 (estimate—amount paid will be per loan documents)

Personnel Costs: \$ 5,208.00 (\$2,403.85 bi-weekly payroll)  
(Property Manager,  
Maintenance Worker)

**Utilities:**

EDCO Waste Management \$1,380.95  
Helix Water District \$3,405.81  
San Diego Gas & Electric \$2,975.00

**Necessary Vendors:**

Landscaping/Groundskeeper \$1,000.00  
HD Supply \$ 200.00  
(Office Supplies and Unit Small  
Equipment Repair & Replacement parts)

Cox Cable \$ 335.50  
(Internet, Clubhouse Cable &  
Office Telephones)

Azul Pool & Spa \$ 300.00  
Pest Control \$ 65.00

SSD Systems Security \$ 94.50

Unit Turnover Costs: \$1,500.00

**TOTAL: \$44,791.27**

**Extraordinary, One-Time Expenses:**

Unusual Rent Ready Expenses: Up to \$5,000.00 to re-let the units the receiver caused to be vacated.

Property insurance: \$9,031.00 (only if not paid by loan servicer through impounds)